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August 23, 2013

Jean Jewell
Secretary, Idaho Public Utilities Commission
472 W. Washington St.
Boise, ID 83702

Re: Case PAC-E-13-04 - Community Action Partnership Association of Idaho's Testimony of Christina Zamora

Dear Ms. Jewell:

Enclosed are an original and nine (9) copies of Community Action Partnership Association of Idaho's Testimony of Christina Zamora in the above-captioned proceeding. Also included is a CD of the Testimony and Exhibit A for the court reporter.

The parties will be served electronically and hard copy today.

Sincerely,

Brad M. Purdy

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER TO INITIATE DISCUSSIONS WITH INTERESTED PARTIES ON ALTERNATIVE RATE PLAN PROPOSALS	CASE NO. PAC-E-13-04

COMMUNITY ACTION PARTNERSHIP ASSOCIATION OF IDAHO

DIRECT TESTIMONY OF CHRISTINA ZAMORA

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Christina Zamora. I am the Executive Director of the Community Action Partnership Association of Idaho (CAPAI) headquartered at 5400 W. Franklin, Suite G, Boise, Idaho, 83705. I am testifying on behalf of CAPAI.

Q: Please describe CAPAI's organization and the functions it performs relevant to its involvement in this case.

A: CAPAI is an association of Idaho's six Community Action Agencies, the Community Council of Idaho and the Canyon County Organization on Aging (CCOA), Weatherization and Human Services, all dedicated to promoting self-sufficiency through removing the causes and conditions of poverty in Idaho's communities.

Q: What are the Community Action Partnerships or "Agencies?"

A: Community Action Partnerships ("CAPs") are private, nonprofit organizations that fight poverty. Each CAP has a designated service area. Combining all CAPS, every county in Idaho is served. CAPs design their various programs to meet the unique needs of communities located within their respective service areas. Not every CAP provides all of the following services, but all work with low-income people to promote and support increased self-sufficiency. Programs provided by CAPs include: employment preparation and dispatch, education assistance child care, emergency food, senior independence and support, clothing, home weatherization, energy assistance, affordable housing, health care access, and much more.

II. SUMMARY

Q: Please summarize your testimony in this case?

A: My testimony focuses on significant concerns that CAPAI has regarding the manner in which this case has been processed, and the impact that the procedure employed has had on the outcome embodied in the proposed settlement agreement and the ability of CAPAI to fully and effectively participate in this case as a formal party.

Q: Does CAPAI oppose the proposed settlement stipulation pending before the Commission in this case?

A: Ordinarily, the answer to that question would be much simpler. The fact is that, from a purely technical and financial standpoint, it might well be that the proposed settlement is in the best interests of all ratepayers, including low-income. This standpoint is very limited, however, and might be more than offset by other considerations. The practical aspect to the question and answer, however, is far more complex. It is CAPAI's position that the procedure employed in this case is unlawful, detrimental to the public interest, and might well lead to additional procedural transgressions of an equal or greater severity as those included in this proceeding.

Q: What is the basis of CAPAI's opposition to the procedure employed in this case?

A: There are numerous facts that form the basis for CAPAI's opposition. Because it had reason to believe that this matter might proceed to hearing on procedural grounds, and because those grounds are intertwined with CAPAI's Motion to Compel responses to its discovery requests submitted to Rocky Mountain, CAPAI provided a very detailed discussion of its procedural concerns, specifically related to this case, in the Brief in Support of Motion to Compel, and related Affidavit of CAPAI's legal counsel, that were submitted to the Commission on July 30, 2013. In order to avoid repetition and avoid engaging in an analysis in my testimony that comes across more like an attorney's legal brief, I adopt by reference and incorporate in my testimony the aforementioned Brief in

Support of Motion to Compel brief and Affidavit, a true and correct copy of which is attached hereto as Exhibit "A."

Q: Did you participate in the preparation of that brief?

A: Yes I did. Though I obviously worked with legal counsel and do not purport to possess the knowledge of an attorney, I was very involved in drafting, reviewing and editing the brief and have thorough knowledge of what it contains.

III. GENERAL NATURE OF RATE CASE PROCEDURAL CHANGES

Q: Putting aside CAPAI's concerns about the present case for the moment, does CAPAI have overarching concerns regarding the general trend that the processing of general rate cases has followed?

A: Yes. As this Commission is acutely aware, the frequency with which general rate cases have been filed by Idaho's three largest electric public utilities[1] has increased remarkably in recent years.

Q: Please identify what concerns this recent trend causes CAPAI?

A: Though I can only speak for CAPAI, I suspect that the one of the primary concerns of every party involved in any rate case and the Commission itself is that increasingly frequent general rate cases are stretching the parties resources to their limits and made a full and thorough participation in these cases increasingly challenging. This is certainly true for CAPAI whose resources are subject to uncertainty due to changes in federal funding levels which, in recent years, have decreased.

Q: What has been the effect of this trend on CAPAI?

A: Without question, CAPAI has been stretched far beyond its financial, technical and practical abilities to meaningfully participate in general rate cases. CAPAI is always

[1] Idaho Power, Avista, and Rocky Mountain Power.

keenly aware and appreciative of the generosity shown by the Commission with respect to its awards of intervenor funding over the years, but the amount of money available by law as well as the legal requirement that expenses be funded by intervenors up-front, have placed CAPAI's ability to continue its representation of the low-income customers of Idaho's regulated utilities at risk. This case alone, due to the use of resources devoted to compelling Rocky Mountain to respond to discovery in good faith and in accordance with the law, has nearly exhausted CAPAI's resources not just for this case but for this financial year and there are likely to other cases of interest to CAPAI yet this year, such as Idaho Power's general rate case.

Q: Aside from the financial impact of nearly annual general rate cases, have there been other developments that concern CAPAI?

A: Yes. As the frequency of rate cases has increased, CAPAI has noticed a very obvious and significant transformation in the manner in which these rate cases are being handled procedurally.

Q: Are you suggesting that the Commission itself has adopted a different general rate case procedure than historically employed?

A: No. To my knowledge, the law regarding the manner in which general rate cases are processed has not been changed and the Commission has not formally adopted any policy to implement such changes. I am referring to the manner in which the parties to general rate cases, including the utility in question, are processing rate cases, specifically in an abbreviated fashion and at an expedited pace.

Q: Please explain your belief that rate cases are being processed differently as their frequency increases.

A: Though my experience in PUC matters is still somewhat limited, it is my understanding Staff typically schedules settlement negotiations in every rate case relatively soon after the case is filed and does so without ever contacting CAPAI to ascertain whether it is prepared to discuss settlement and, if so, what dates are available to CAPAI. CAPAI only learns of proposed settlement after receiving notice from Staff and the date and time have been set and are generally not subject to rescheduling.

Q: How does the foregoing procedure differ from what has historically been the case?

A: Though I have not been intimately involved in rate case procedure long enough to have a historical perspective, a simple review of recent rate cases on the Commission's website reveals several things. First, settlement discussions have not always taken place in general rate cases and when they have, it has typically been long enough after the initial filing of the utility's application and the issuance of the initial Notices and associated Order by the Commission to allow all parties the opportunity to thoroughly examine the filing, engage in formal discovery and otherwise communicate with the Company regarding numerous matters relevant to the filing and, in the case of Staff, even conduct fairly thorough audits of the Company's books sufficient to formulate a position on the many issues inherent in any rate case, particularly those involving revenue requirement, rate spread and rate design.

Q: How does this compare with your understanding of the settlement of rate cases in recent years?

A: My understanding is that not only have there been settlement negotiations in every electric rate case since 2011 involving all three major electric utilities, but that Staff has settled every one of those cases. I do not know the last time that Staff chose to litigate an electric rate case.

Q: Is there anything inherently wrong with Staff agreeing to most if not all rate case settlements?

A: In any given case, no. But for this to become what feels like a virtual certainty seems to have crossed an important line.

Q: Do you know why Staff has settled all such rate cases in the past 2-3 years?

A: Obviously, I do not know all of Staff's rationale for its choices other than what is stated in testimony supporting a settlement stipulation. I find it difficult not to believe, however, that one reason settlement has become a more common occurrence is that the sheer magnitude of rate cases typically pending before this Commission have diminished Staff's ability to apply the normal level of scrutiny an analysis to those cases it settles as it historically has. In such a scenario, settlement, if it seems to be in the best interests of ratepayers in general, becomes more appealing.

Q: How would you describe the typical rate case procedure since 2011?

A: First, it seems that by the time a utility actually files its rate case, it has already engaged in meetings and/or other communications with Staff and larger customer class representatives. This is certainly what occurred in this case. While this might enable Staff to be better prepared for an expedited processing of a rate case, intervenors such as CAPAI do not have the courtesy of having possession of such information and the time to analyze it prior to the filing. What typically happens next is a very abbreviated course of discovery between Staff, the utility involved, and possibly larger industrial special contract customers and the scheduling of the first of what will likely be 2-3 settlement conferences. Although the case is still relatively young, Staff and larger, industrial customers are typically prepared at the time of the first settlement conference to fully

resolve the case. As I've already stated, based on rate cases since 2011, the final outcome is that Staff settles the case, often well before the direct testimony deadline.

Q: How would you describe CAPAI's preparedness by the time of the first settlement conference?

A: Generally, CAPAI has not even had the opportunity to engage in discovery and is still far from identifying areas of concern and issues, let alone formulated a position on those issues.

Q: Why is this?

A: There are numerous reasons including the fact that before it can even intervene in a case before the Commission, CAPAI must obtain the necessary approval from its Board of Directors. Because CAPAI is governmentally funded and because there can be strict limitations on how CAPAI utilizes its funds, the assessment of whether it is financially feasible or even permissible for CAPAI to intervene in a given case can be somewhat protracted. Once the process of determining whether CAPAI is financially capable of intervening in a case is complete and assuming that CAPAI decides to intervene, it then must rely on its legal counsel and the limited time of its Staff to quickly come up to speed on the issues raised by the rate case filing. Occasionally, but not always, CAPAI has an employee who can participate in the case, but that employee's other obligations generally command the vast majority of their time. CAPAI rarely has the financial ability to retain an expert witness. By the time that the first settlement conference is conducted in general rate cases, CAPAI has usually had little to no opportunity to conduct discovery, or has submitted requests which have not yet been responded to. Thus, CAPAI is still engaged in the process of issue identification and a risk/reward analysis of pursuing any given objective. Suffice it to say, CAPAI is very far from being able to negotiate a settlement

of CAPAI's issues and positions that haven't even been identified or created at the time that Staff schedules the first settlement negotiations.

Q: Doesn't the 60 day Notice of Intent period enable CAPAI to perform the requisite tasks you've just outlined?

A: Only to an extent. A full assessment of the viability of intervention cannot be conducted until CAPAI has seen the rate case Application to determine whether the interests of low-income customers justify intervention in a rate case.

Q: Without revealing anything of substance that occurs during confidential settlement discussions, can you describe the general tone of settlement negotiations?

A: The general tone in all settlement negotiations is that the utility in question seems highly motivated to settle the case in its entirety as quickly as possible and with all parties signatory to the settlement stipulation that results from the negotiations. The *quid pro quo* for this is often that the utility will make certain concessions so long as the parties wrap the settlement up and do so very quickly.

Q: Is there anything inherently wrong with a rapid resolution of differences between all parties to a rate case?

A: In a vacuum, no. But that assumes that all parties have had ample opportunity to fully assess their respective issues and positions and made a decision as to whether settlement as proposed is in their best interests. It also assumes that all parties, including CAPAI, have been given reasonable responses to discovery, kept in the loop on case developments, and had the attention of Commission Staff that other parties have come to expect.

Q: If CAPAI is unprepared for settlement negotiations as you describe, what generally takes place during the first discussions?

A: CAPAI does its best to identify the major issues it can identify and to bring those issues to the attention of the other parties.

Q: Have there been problems in this regard?

A: Absolutely. In numerous cases, CAPAI has raised issues of interest or concern during settlement only to be instructed by Staff and/or the utility that CAPAI's issues are of no relevance to them and will not even be mentioned in the settlement stipulation nor addressed during the settlement. When this occurs, CAPAI can either simply stand up and walk out on the negotiations, or insist on stating its issues and positions on those issues to a typically mute crowd. This is not to say that all other parties to all rate cases do not occasionally support CAPAI and its positions. But it is fair to say that if the utility, Staff and the utility's most heavily financed customer groups are all in agreement, nothing of value will likely be accomplished during settlement. This marginalization is very effective at isolating and shutting out a party such as CAPAI, but does not constitute a good faith attempt to address issues of concern to all parties. Regardless of whether this is a violation of any rule or law, it seems counter-productive to the concept of settlement negotiations.

Q: Are you familiar with the three general rate cases that took place in 2011 involving Idaho Power, Avista and Rocky Mountain?

A: To a limited extent, yes.

Q: What is your knowledge of those cases?

A: My responsibilities in 2011 included working on the various low-income weatherization programs so I was well aware that funding and program design issues were at stake during the 2011 cases. Although the Avista case settled with CAPAI joining in that settlement, CAPAI was the only party to not join in the other two cases which ultimately

went to hearing on the low-income issues. In addition, CAPAI also raised an issue of importance whether the authorized rates of return of Idaho Power and Rocky Mountain might be excessive given increasing cost recovery and other mechanisms that stabilize a utility's earnings and make them more predictable.

Q: What was the general outcome of those cases?

A: The Commission took no action regarding CAPAI's position on rate of return and, in terms of low-income weatherization funding and program design, essentially segregated that issue out and spun it off into a protracted workshop process in Case No. GNR-E-12-01 (the "low-income workshop case"). The Commission otherwise ruled against CAPAI in the 2011 cases.

Q: What was the result of the low-income workshop case?

A: On April 12, 2013, the Commission issued Order No. 32788 effectively freezing low-income weatherization funding levels for several years. The future existence of those programs remains in doubt.

Q: In your mind, did the 2011 and workshop case rulings render CAPAI's involvement in PUC cases pointless?

A: Obviously not, as evidenced by CAPAI's involvement in this case.

Q: What are the issues or concerns that maintain the importance to CAPAI of participation in PUC proceedings?

A: First, it should not be overlooked that the residential class of every electric utility is its largest in terms of customers and revenues generated. CAPAI is the only low-income residential advocate and while CAPAI does not claim to represent the interests of the entire residential class, many of those customers are low-income or in danger of becoming so. Furthermore, it isn't unusual for low-income interests to be relevant to and

simpatico with residential issues on the whole. Helping low-income customers be more timely in paying their bills, reducing their arrearages, or keeping them connected to the system as customers has benefits to the residential class and all ratepayers in general.

Q: Is low-income weatherization the only issue raised by CAPAI over the past decade or longer?

A: Low-income weatherization is not the only issue CAPAI has brought to the Commission's attention over the years. One example of an area of issues still important to CAPAI and relevant to all residential customers in PUC proceedings is rate design. Beginning with Avista's 2012 general rate case (Case No. AVU-E-12-08), CAPAI adopted a new strategy to its long-standing attempt to obtain low-income consumption data and then use that data to, among other things, determine the impact that alternative residential rate designs have on low-income customers. Historically, there was no actual low-income consumption data available to CAPAI to utilize for purposes such as rate design. The reasons for this are varied but typically were based on the utilities' insistence that they maintain individual customer privacy. During Avista's 2012 rate case, CAPAI proposed that Avista gather low-income consumption data based on what CAPAI calls a "low-income proxy group" which is simply a list of those customers receiving either LIHEAP or low-income weatherization benefits. It is essential, of course, that customers who receive both form of benefits are counted only once for inclusion into the proxy group.

Q: What was Avista's reaction to this proposal?

A: Avista was quite willing to gather low-income consumption data by simply identifying those customers who qualify for the proxy group, eliminate any double-counting, and then collect their consumption data using their physical addresses without ever revealing

their personal information. Upon obtaining this data, CAPAI and Avista worked together in a collaborative and expeditious fashion to perform "model runs" which is simply a term that CAPAI used to describe the process of establishing hypothetical rate designs and then determine how implementation of those rate designs would impact the proxy group compared to the existing residential rate design.

Q: What, if anything, did CAPAI learn from this process?

A: CAPAI learned a great deal, including the fact that, at least with respect to Avista, low-income customers often consume more energy than their non-low-income residential counterparts, in some cases substantially more. Based on this knowledge, CAPAI challenged historical presumptions and reconsidered the impact that rate design changes would have on low-income ratepayers. For example, if low-income customers have higher consumption rates year-around, then increasing the utility's basic monthly customer charge as typically requested by utilities could actually lower the majority of low-income customers' monthly bills. Similarly, altering tiered residential rates by changing the consumption levels that demarcate the different tiers, or by changing the commodity pricing for existing tiers, or finally, by adding a third tier, could have positive or negative consequences for low-income customers that might not have been assumed or expected. CAPAI believes that the acquisition of this information is of value not only to CAPAI and low-income customers, but to the utility, other residential customers, Staff, and the Commission.

Q: Does the fact that the outcome of Avista's 2012 general rate case was productive and beneficial enough for CAPAI to support that settlement in any way diminish the general procedural concerns you have already discussed?

A: Not at all. To a certain extent, the Avista case followed the same fast-track I've already described. In fact, CAPAI joined in the settlement weeks after it was executed by the other parties because CAPAI required sufficient time to make a thorough analysis of the issues it deemed important and to determine whether the settlement was in the best interests of the low-income. What saved that case from being unfair to CAPAI and convinced CAPAI to join in the settlement was simply the willingness of Avista to work cooperatively, productively and in a very prompt fashion to obtain the information CAPAI sought. Avista made its technical experts and employees available not just to respond to questions and provide data, but to work toward the common goal of simply better understanding the truth.

IV. PROCEDURAL CONCERNS ABOUT THE PENDING CASE.

Q: Would you please summarize your concerns regarding the procedure employed in the pending case?

A: First, this case is a very striking example of what the consequences of deviation from established rate case policy can be, especially when done on an *ad hoc* basis. In an attempt to avoid re-inventing the wheel, I note that all of CAPAI's concerns regarding the procedure followed in this proceeding are thoroughly articulated in CAPAI's Brief in Support of Motion to Compel responses to CAPAI's discovery propounded to Rocky Mountain. A true and correct copy of that Brief is attached hereto as Exhibit "A" and is incorporated herein by reference. Specifically, pages 2-12 of the brief outline every procedural abnormality in this case to which CAPAI objects. I am incorporating CAPAI's brief by reference in order to avoid re-inventing the wheel and turning what should be testimony into a legal brief.

Q: Did you have any involvement in drafting CAPAI's Brief in Support of Motion to Compel?

A: I was very involved and worked with CAPAI's legal counsel to construct the brief and am very familiar with its contents.

Q: Without repeating everything contained in CAPAI's brief, can you generally outline the procedural concerns you have regarding this case?

A: The procedural abnormalities of this case began before it was even filed. As noted in the brief, Rocky Mountain conducted meetings, either in person or via other forms of communication, with Staff and the Company's larger, non-residential customer groups. CAPAI was not invited or included in these conversations and was completely unaware that they had taken place until after the Company's filing. While there is no transcript of these communications, they obviously advanced the knowledge of those involved regarding what to expect in terms of the filing and better prepare for settlement negotiations. Furthermore, the Company acknowledges that it was attempting to reach a resolution on an alternative to filing a general rate case. Had these communications taken place following the filing, they certainly would have been conducted as confidential settlement negotiations. Because they occurred prior to filing, it is unclear what they are.

Q: Please describe the procedural concerns you have regarding the filing.

A: The filing itself is confusing, self-contradictory, and somewhat indecipherable. It consists of two documents including a 60 day Notice of Intent to file a general rate case and an Application to "initiate discussions with interested parties on alternative rate plan proposals.". The Notice of Intent, by itself, seems to comply with the Commission's procedural rules and is otherwise typical. My understanding is that the typical procedure in general rate cases is that the 60 day Notice of Intent is filed followed by the filing of an

Application for a rate increase at the end of that 60 day period. I further understand that this Application must contain certain information and be properly captioned for what it is. The only application that Rocky Mountain filed in this case seems to be more in the nature of an investigative proceeding to explore rate case alternatives that could apply to any utility, not just Rocky Mountain and any future case.

Q: What are your concerns regarding the Application filed with the Notice of Intent and what it led to in this case?

A: Though my experience in this area is still limited, it seems that, through the filing of the Application given an unusual title and not in conformity with rules applicable to rate case applications, Rocky Mountain, in reality, used this as a means of end-running existing rules regarding rate cases and negotiating a rate case prematurely and in violation of law. As such, the Application Rocky Mountain did file could be characterized as a rate case application in disguise.

Q: The term "rate plan" has been used in this case to describe Rocky Mountain's Application and the outcome of the case it initiated. Does this have any significance to you?

A: No. Though I'm not yet well-versed in proper rate case procedure, it is a general truth that labels are always trumped by substance. Regardless of how the Company worded or labeled its Application, all that matters is the substance of the filing and the outcome of the case. The proposed settlement stipulation results in a rate increase. Calling it a "rate plan" or an "alternative" procedure for increasing rates does not change the fact that its resulted in an increase to the Company's rates.

Q: How would you respond to a contention that the "rate plan" proposed in this case is not a general rate increase subject to the otherwise applicable rules and laws?

A: My response is that avoiding applicable law by use of labels is a dangerous path to go down and that will likely lead to a *de facto* changing of or disregard for the law by use of labeling and procedural gamesmanship. Adherence to procedure that was legally established is of great importance. Once a utility is allowed to alter that procedure without going through the proper legal process throws the door open wide for further and possibly more serious deviations from established law.

Q: Without asking you to give a legal opinion, what is your understanding as to proper rate case procedure?

A: A thorough answer to that question is set forth in CAPAI's brief. I am under the belief that once a procedure has been established, whether through legislation or the administrative rulemaking process, it is the law and must be adhered to unless and until changed according to the process just outlined. Regardless of how this case was labeled or described in the Application, the only salient fact is that it resulted in a rate increase. As noted in CAPAI's brief and stated in paragraph 7 of the settlement stipulation itself, the outcome of this case, if the settlement stipulation is approved, would be: a "base revenue requirement for all schedules will be increased."

Q: Does the Commission's Notice of Application and Order No. 32761 provide any insight into the nature of the Application in this case?

A: Yes. Page 2 of the Commission's Notice of Application states: "the Commission finds it reasonable to initiate a case so that parties can engage in settlement discussions in an effort to avoid or narrow issues in a general rate case." It is significant that the Commission's Notice speaks more in generic than case-specific terms referring to "a" general rate case as opposed to the specific case at hand. Furthermore, the Commission's statement of the scope of the case initiated by the Application is to "avoid or narrow

issues," not to avoid existing law by allowing the parties in a case opened for the purpose of narrowing or avoiding issues to actually settle a general rate case, especially when the 60 day Notice of Intent had not even expired and a formal rate case application had not been filed and the Company was prohibited by a previous rate case settlement from even filing for a rate increase until May 31, 2013, as stated in CAPAI's brief.

Q: What are your specific objections to the fact that the settlement stipulation proposes a rate increase?

A: As stated in the brief and earlier in my testimony, CAPAI's objections to the requested rate increase include: 1) the fact that discussions regarding a possible settlement of Rocky Mountain's rate proposal and the procedure by which that settlement might be arrived at began between select parties prior to the case even being filed and ending in a stipulation agreed to in principle in May and formalized in writing in early June, 2013; 2) the parties did not wait the required 60 day period before a rate case was even considered, and; 3) the rate increase stemming from an application filed on March 1, 2013 violates the Company's agreement in a prior case to not file for a rate increase prior to May 31, 2013.

Q: Is there anything else that you find troubling about the outcome of this proceeding?

A: Yes. It seems quite peculiar that the parties do not appear to have discussed "alternatives" to a general rate case as the Notice of Application, Order No.32761, and the Application itself stated was the intent and purpose of the case. The stipulation contains no discussion of alternatives to the normal rate case process and there are certainly no alternatives identified, let alone analyzed in the stipulation. The case was treated from the outset to the settlement stipulation exclusively as a rate case, nothing more nor less.

Q: Regardless of CAPAI's concerns about the procedure employed in this case, and without divulging anything of substance of a confidential nature, did CAPAI participate in the settlement negotiations?

A: CAPAI did participate with the hope of better understanding what was and remains a perplexing filing and procedure and to urge the parties to comply with all applicable laws. CAPAI also desired to continue its publicly-stated goal of obtaining from Rocky Mountain the same manner of low-income consumption data and impacts of alternative residential rate designs that it had obtained from Avista, though the data would obviously be different and so might the conclusions to be drawn from that data. CAPAI has, in past years, advocated for residential rate design changes for Rocky Mountain and felt particularly compelled to determine whether the assumptions built into its proposed changes were supported by fact.

Q: Did CAPAI seek to obtain the data and rate design alternatives you've described from Rocky Mountain?

A: Yes, though not without considerable strife and expense and with only partial success. Unlike Avista, Rocky Mountain simply refused to provide CAPAI the most critical data it sought through discovery requests unless and until CAPAI joined in the settlement stipulation. All of this is set forth in the brief and affidavit. To this day, it seems perplexing that Rocky Mountain refused to respond to CAPAI's discovery, particularly when CAPAI had repeatedly pointed out that the data and conclusions drawn from that data might well bring CAPAI and the Company together on certain issues.

Q: What was Staff's position or role in terms of the discovery dispute?

A: Staff basically took no position in the matter.

Q: Did Rocky Mountain ultimately respond in full to CAPAI's discovery requests?

A: No. To this date, Rocky Mountain still has not provided the entirety of the information sought by CAPAI. Unlike the data responses provided by Avista, Rocky Mountain has simply provided an Excel spreadsheet that is largely undecipherable. CAPAI is in the process of attempting to make any sense out of what little information the Company has provided and determine the impacts of various rate design alternatives.

Q: To the extent Rocky Mountain provide anything in response to CAPAI discovery request No. 6, when was that information provided?

A: It was not provided until August 12, 2013, less than four days prior to the original testimony prefile deadline (the Commission extended the deadline by one week for CAPAI). The discovery request was submitted to Rocky Mountain, however, in April, 2013. Despite countless assurances of numerous form, the Company, after four months, still has not fully responded to CAPAI's discovery. Furthermore, Rocky Mountain refused to respond to CAPAI's discovery requests unless and until CAPAI withdrew its Motion to Compel, before even seeing the responses, and unless and until CAPAI joined in the settlement stipulation, thereby waiving its rights to oppose any aspect of the proposed rate case settlement.

Q: Does the fact that Rocky Mountain ultimately responded, at least in part, to CAPAI's discovery requests diminish the concerns that CAPAI has in this case?

A: No. CAPAI utilized limited resources simply trying to convince Rocky Mountain to respond to the discovery requests. Had the Company done so when it promised, which was April through May, CAPAI could have utilized its limited resources more effectively and been prepared to take a position on rate design one way or another. This loss cannot be recovered.

V. SUMMARY

The manner in which this case was processed, if permitted to stand, will almost certainly lead to even more egregious violations and *de facto* changes in general rate case procedure. To the best of CAPAI's knowledge, none of the numerous states in which PacifiCorp operates has condoned the procedure for obtaining a rate increase employed in this case. It would set a bad precedent and send the wrong signal to Idaho Power and Avista. CAPAI has heard that other states are considering alternatives to general rate case procedure, but is not aware of any state that considers simply calling the case something it isn't and violating existing law without going through the proper channels to be a valid alternative. For all the reasons outlined in this testimony and CAPAI's brief, the procedure employed in this case is in violation of the law and, by virtue of that law, Rocky Mountain's Application should considered withdrawn and not result in a rate increase.

When the Commission chose to break out low-income weatherization from the 2011 rate cases into a separate docket, CAPAI fully and in good faith participated in that process. It seems to be one thing to break out something such as LIWA, but to effectively eliminate existing rate case procedure, and through the use of marginalization of CAPAI and Rocky Mountain's uncalled for behavior in terms of refusing to respond to discovery related to rate design issues and effectively prevent CAPAI from raising rate design issues is another matter and should not be permitted. Rate design is a legitimate general rate case issue regardless of whether other parties wish to address it. If the settling parties can see their way fit to address issues of concern to special contract and large industrial customers, then they can certainly accommodate a good faith discussion of CAPAI's rate design issues.

Regardless of whether the rate increase proposed in the settlement stipulation is in the best interests of all ratepayers, nothing is worth the cost of allowing parties to unilaterally ignore existing law or effectively rewrite the law on an *ad hoc* basis. Should the Commission deem it appropriate to allow for very limited rate cases in which issues such as revenue requirement, rate spread or rate design are not fair game, then it should accomplish this by means of obtaining the necessary legislative changes or engage in administrative rulemaking.

CAPAI doesn't have the ability or funding necessary to determine whether the proposed settlement is in the best interests of ratepayers and, because of Rocky Mountain's refusal to comply in good faith with CAPAI's legitimate discovery requests regarding rate design, CAPAI has not even had the time to fully analyze that issue and determine whether the existing rate design is fair in light of the concessions that Rocky Mountain took from the proposed settlement and all other salient facts.

Q: Does this conclude your direct testimony?

A: Yes, it does.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 23rd day of August, 2013, I served a copy of the foregoing document on the following by first-class U.S. postage and via electronic mail.

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EXHIBIT A

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER TO INITIATE DISCUSSIONS WITH INTERESTED PARTIES ON ALTERNATIVE RATE PLAN PROPOSALS	**CASE NO. PAC-E-13-04** **COMMUNITY ACTION PARTNERSHIP ASSOCIATION OF IDAHO'S BRIEF IN SUPPORT OF MOTION TO COMPEL**

The Community Action Partnership Association of Idaho ("CAPAI") submits this brief in support of its Motion to Compel filed with this Commission pursuant to Rules 221-225 of the Commission's Rules of Procedure, IDAPA 31.01.01.000 (hereinafter generally referred to as "Procedural Rules"), and Rules 26 and 37 of the Idaho Rules of Civil Procedure.

I. INTRODUCTION

Though this motion is limited to a request for an Order compelling responses to discovery propounded by CAPAI to PacifiCorp, the highly unusual nature of this unprecedented filing exacerbates the consequences of PacifiCorp's refusal to respond to legitimate discovery and constitutes a substantial diminution of CAPAI's rights as a party. Thus, a detailed background of the nature and procedural history of this case is essential to a full understanding of the motion.

II. BACKGROUND

A. PacifiCorp's Initial Pleadings.

1. Notice of Intent to File a General Rate Case.

This case was formally initiated by PacifiCorp on March 1, 2013 through the filing of two documents: 1) a Notice of Intent to File a General Rate Case, and; 2) an Application. The Notice of Intent is a single page letter with a subject line that reads: "Re: Notice of Intent to File a General Rate Case." *[Emphasis Added]* The body of the letter starts as follows: "Pursuant to the Idaho Public Utilities Commission's Rule of Procedure 122, PacifiCorp dba Rocky Mountain Power hereby files Notice of Intent to file a general rate case. *[Emphasis Added]*. This Notice is being filed at least 60 days before the Company intends to file a general rate case." *[Emphasis Added]*. Sixty days from March 1, 2013 would actually be April 30, 2013. PacifiCorp notes in its Notice of Intent, however, that:

> This Notice is being filed at least 60 days before the Company intends to file a general rate case. Pursuant to Order No. 32432, resulting from a stipulation between parties in Case No. PAC-E-11-12, the Company will not file a general rate case before May 31, 2013, any rate change resulting from the case will not be effective before January 1, 2014.

[Emphasis Added].

Rule 122 of the Commission's Procedural Rules, IDAPA 31.01.01.122 requires all utilities with gross annual revenues from retail customers in Idaho exceeding three million dollars ($3,000,000.00) to file a notice of intent "at least sixty (60) days before filing a general rate case." The rule further provides that the if the application itself is not filed within 120 days after filing the Notice of Intent, the Notice will be considered withdrawn, unless properly supplemented. PacifiCorp has never supplemented its Notice of Intent in the manner required by Rule 122 for the Notice to remain valid beyond 120 days.

PacifiCorp's Notice of Intent is unique in many respects. Though the first paragraph is relatively routine and appears to satisfy the requirements of Procedural Rule 122 for a general rate case, the second paragraph of the Notice takes an unusual and unprecedented turn by which the Company seeks immediate and extraordinary procedural and substantive relief from the Commission:

> "The Company is filing an Application to respectfully requesting [*sic*] that the Commission open a docket, Notice the Application, and establish an intervention deadline for interested persons to intervene with the intent to participate in discussions that may lead to an agreement on an alternative rate plan solution, other than the Company filing a general rate case."

[Emphasis Added].

Thus, PacifiCorp's Notice of Intent explicitly and repeatedly states the Company's intention to file a general rate case and that said filing cannot occur prior to May 31, 2013, but then takes an unexpected turn and seeks immediate processing of the accompanying Application for what seem to be other purposes. For numerous reasons, Notices of Intent to File a General Rate Case are not accompanied by Applications and do not seek immediate procedural relief from the Commission. PacifiCorp, nonetheless, requested the Commission to immediately "Notice the Application" accompanying the Notice of Intent and initiate a proceeding whose stated purpose is actually an attempt to avoid filing a general rate case, an obvious contradiction with the stated and formal purpose of a Notice of Intent.

PacifiCorp also requested that the Commission establish an intervention deadline specifically for those who have "the intent to participate in discussions that may lead" to the avoidance of a general rate case. Ordinarily, intervention deadlines established by the Commission do not specify what an intervenor's "intent" must be in order to intervene. The Procedural Rules contain no specific "intent" for intervenors so long as the intervention petition

contains all of the elements set forth in Procedural Rule 72. Regardless, the Notice of Intent in this case seems to be seeking two contradictory things: a general rate case and a case limited to the objective of discussing how to avoid a general rate case.

One could imagine any number of scenarios of how this case, once noticed by the Commission, would turn out. One obvious possibility is that the parties might have drafted a list of possible alternatives to a general rate case as the very wording of the initial filing and the Commission's Notice of Application suggest. That list could then have been provided to the Commission and the parties could have proposed a particular procedure by which to handle the Application for a general rate case that PacifiCorp would then file no sooner than May 31, 2013.

The last thing that CAPAI envisioned, however, was that the parties would simply and unilaterally disregard all Procedural Rules pertaining to general rate cases, not draft any particular procedural alternative for the Commission's consideration, and negotiate the confidential settlement of a general rate increase that didn't and couldn't lawfully even exist yet. It is hard to imagine that this is what the Commission envisioned. CAPAI is the only party not to execute the settlement stipulation and has made clear its deep concerns about the potential, negative repercussions of processing a case in this manner unless and until such time as the appropriate legislative changes are made to the Idaho Code and/or proper administrative rulemaking is completed altering the existing procedure prescribed for general rate cases.

Paragraph 4 of PacifiCorp's Application states that, prior to the filing, the Company had already "met informally with the majority of its customer representatives including Commission Staff, PacifiCorp Idaho Industrial Customers, Idaho Irrigation Pumpers Association and Monsanto to discuss the concepts of a rate plan that could possibly avoid the necessity...of prosecuting a general rate case." *Application at p. 2.* CAPAI was not invited to join in these pre-

filing discussions and had no idea that they had even taken place until after March 12, 2013, when the Commission issued a Notice of Application and Order No. 32761. In fact, it was not until April 19, 2013, during the first settlement conference, that CAPAI became aware of the details of the controversial proceeding that was being proposed.

2. Application of Rocky Mountain Power

(a) Application is Premature, Confusing and Invalid

PacifiCorp's March 1, 2013 filing is further muddled by the inclusion of the "Application of Rocky Mountain Power" with the Notice of Intent, the former being every bit as peculiar and unprecedented as the latter. The confusion begins with the Application's caption which characterizes the case as: "In the matter of the application of Rocky Mountain Power to initiate discussions with interested parties on alternative rate plan proposals." This is quite different from the typical caption used in general rate case applications.

Rather than outline the details of the general rate increase sought by the Company, as is required by Rule 121, the Application actually discusses why a general rate case cannot even be filed until May 31, 2013. The Application concludes with the following highly unusual prayer for relief:

> WHEREFORE, Rocky Mountain Power respectfully requests that the Commission open and notice a docket and set an intervention deadline that would formally notify interested parties of Rocky Mountain Power's intent to engage in settlement discussions, pursuant to IPUC Rule 273,[1] with the desire to reach agreement on terms that would allow the Company to avoid filing a general rate case in 2013 and extend the existing rate plan for an additional period of time.

Application at pp. 2-3.

[1] A rule stating that the Commission may "inquire of the parties" as to whether settlement in an ongoing proceeding are in progress or contemplated and/or inviting settlement of certain issues or the entirety of a pending case

The preceding request is improper on its face because it requests that the Commission limit what is stated to be a general rate case to "settlement discussions" involving only those who have the "intent to engage" in such discussions "with the desire to reach agreement on terms that would allow the Company to avoid filing a general rate case in 2013." An interested person who wished to participate in any general rate case that might be conducted but who was not interested in devising ways to deviate from existing law and policy regarding general rate case procedure, would not even seem to be welcome by virtue of the notice language requested by PacifiCorp. This illustrates the potential for confusion and an unwitting waiver of rights by parties who might not have intervened on the basis that the case at hand is a precursor to, or something other than, the actual rate case which would presumably be filed roughly three months later.

The simultaneous filing of an Application with a Notice of Intent is patently counterproductive and in violation of Procedural Rules. One of the primary purposes of a Notice of Intent is to give the public and potential intervenors advance notice of a general rate case which typically involves a considerable investment of resources and preparation. It makes no sense, therefore, to file an application simultaneously with the Notice of Intent when that application might, as it did in this case, result in a proposed general rate increase prior to the expiration of at least 60 days time.

The atypical procedure adopted in this case is troubling because there is no way of knowing to what extent the public was confused by this filing and whether parties who might otherwise have intervened but chose not to believing that this was something other than a rate case if, for no other reason, than the caption of the Application itself, and the wording of the Notice of Intent and Application which could be interpreted in numerous different ways. Indeed, CAPAI itself was uncertain whether a rate increase could lawfully be permitted without a proper

application filed no sooner than May 31, 2013. To be cautious, CAPAI petitioned to intervene in this case, even though it had no "intent" to seek an alternative to a general rate case and even though the filing seemed to be a violation of Procedural Rules, simply out of fear that failure to intervene would likely be deemed a failure to intervene in the general rate case that PacifiCorp explicitly implied would be filed no sooner than May 31, 2013. In fact, CAPAI's concerns were well-founded. Had it not intervened when it did, it would have had no say whatsoever in the outcome of this case. As it is, even though it intervened, CAPAI's full parties' rights were diminished by virtue of the inappropriate procedure of this case combined with PacifiCorp's refusal to respond to discovery requests.

Finally, CAPAI anticipates that PacifiCorp will argue that, as characterized in the Application's Prayer for Relief, the settlement stipulation in this case does not constitute a general rate increase but, rather, an "extension of an existing rate plan for an additional period of time." *Application at pp. 2-3.* The very terms of the settlement stipulation being proposed refute any such contention. For example, paragraph 2 of the stipulation states: "[t]he following Stipulation represents an agreement between the Parties on a new two year rate plan." *Stipulation at p.2 [Emphasis Added].* Furthermore, paragraph 7 of the Stipulation begins: "The Parties agree that base revenue requirement for all schedules will be increased by the uniform percentage amount of 0.77%." At its core, this Stipulation is no different than any other general rate case increase negotiated but processed in compliance with the Procedural Rules applicable to general rate cases.

(b) Failure to File Proper Application Results in Dismissal of Case.

Procedural Rule 122 provides, in part:

> If the general rate case [i.e., "Rule 121 application"] described in the notice is not filed within one-hundred twenty (120) days after filing of

> the notice of intent to file a general rate case, by operation of this rule a notice of intent to file a general rate case will be considered withdrawn unless it is supplemented with a written statement that the utility still intends to file a general rate case of the kind described in its notice of intent to file a general rate case.

Emphasis Added.

To this day, PacifiCorp has never actually filed what constitutes an application for a general rate case in compliance with the numerous requirements of Procedural Rule 121 including, among other things, the specific details of the proposed rate increase, proposed tariffs with the necessary changes marked on the existing tariff, justification of the rate increase in the form of testimony and exhibits, as well as financial statements, cost of capital and appropriate cost of service studies and, if the utility in question operates in more than one jurisdiction as PacifiCorp does, a jurisdictional separation of all investments, revenues and expenses allocated or assigned in whole or in part to Idaho intrastate utility business regulated by this Commission showing allocations or assignments to Idaho, and so on.

Because more than 120 days have passed since the filing of the Notice of Intent filed on March 1, 2013 and no general rate case application, as defined by Procedural Rule 121, among others, has yet been filed, pursuant to Rule 122, therefore, PacifiCorp's filing is technically deemed withdrawn and the proposed settlement stipulation is legally null and void.

(c) Application Violated 2011 Settlement Stipulation

In addition to the inappropriate timing or lack of actual filing of the Application, by virtue of Procedural Rule 122, and the fact that the case was deemed withdrawn, the March 1 Application also violated the 2011 PacifiCorp settlement. That Stipulation, filed October 18, 2011, provides in part:

> 19. The Parties agree that in recognition of the two-year rate plan covered by this Stipulation, Rocky Mountain Power will not file another

> general rate case before May 31, 2013, with new rates not effective prior to January 1, 2014,

Stipulation at p. 6.

Regardless of how PacifiCorp's Application in this case is worded or characterized, it led to the immediate processing of the application, including the conducting of discovery and two settlement conferences, and ended in an agreement and proposal, prior to May 31, 2013, to increase rates. Though the settlement stipulation was not filed until June 3, 2013, the stipulation was obviously not negotiated, formalized in a written stipulation, circulated for comments and revised, and executed by all parties in the span of three days. Thus, it had largely been resolved prior to May 31, 2013 and, therefore, constitutes an effective violation of the settlement agreement executed in PacifiCorp's 2011 general rate case.

B. Procedural Abnormalities of Case

1. PacifiCorp Filing Misleading and Notice Issued by Commission Was Not Complied With.

On March 12, 2013, only eleven days after the Company's filing, the Commission issued a Notice of Application and Order No. 32761 commencing the processing of PacifiCorp's Application. The Commission's Notice of Application states:

> Based upon our review of the Application and Staff's recommendation, the Commission finds it reasonable to initiate a case so that parties can engage in settlement discussions <u>in an effort to avoid or narrow issues in a general rate case</u>.

Notice of Application at p. 2 [Emphasis Added].

Though CAPAI does not presume to know what the Commission's intentions were regarding the language contained in the Notice of Application and Order 32761, the Notice does seem to state on its face that, while the discussions between the parties might "avoid" or

"narrow" issues, it seems to suggest that a general rate case will still be filed. The Company's 60 day Notice of Intent was made roughly 90 days before the date on which it could file the rate case, and the Commission issued a Notice of Application a mere 11 days after the filing, so perhaps the Commission was providing the parties an opportunity to streamline the rate case that would ultimately be filed and conducted.

Regardless, CAPAI questions whether the Commission anticipated that the parties to this proceeding would not simply avoid or narrow issues, but go much further and actually settle a rate case that hadn't yet been filed and propose a general rate increase to the Commission. It seems that the settlement stipulation proposing a general rate increase appears on the surface to have been an abuse of a process for a purpose other than stated in the Notice of Intent, in violation of an existing settlement agreement, in contradiction to the Commission's Notice of Application and Order 32761, and in violation of numerous Commission Procedural Rules.

2. Private Pre-Filing Discussions Seeking Input on Filing.

Paragraph 4 of the "Application of Rocky Mountain Power" states:

> Company representatives have met informally with the majority of its customer representatives including Commission Staff, PacifiCorp Idaho Industrial Customers, Idaho Irrigation Pumpers Association and Monsanto to discuss the concepts of a rate plan that could possibly avoid the necessity and associated expenses for all parties of prosecuting a general rate case.

It was not until sometime after the Commission issued its Notice of Application and Order No. 32761 that CAPAI even became aware that the Company had made its filing and, prior to that filing, had already discussed the substance of it with the Commission Staff and a select group of the Company's largest customer groups. CAPAI, the Idaho Conservation League, and the Snake River Alliance have all been regular intervenors in PacifiCorp filings in recent years but were not listed in paragraph 4 of the Application as having been involved in these pre-

filing discussions. CAPAI certainly had no knowledge that the discussions mentioned by PacifiCorp were even taking place, let alone what they involved.

Thus, the Commission Staff and PacifiCorp's largest Idaho customer groups knew of what procedural plans the Company had in mind at some point in time prior to the filing date of March 1, 2013. Upon inquiring informally of the nature of such plans following March 1, CAPAI was informed that the Company would circulate something in writing prior to the first settlement conference conducted on April 19, 2013. No such document was ever received by CAPAI and it wasn't until April 19 that CAPAI had any idea of what PacifiCorp was actually seeking in this case and what positions had been developed by those parties who were privy to the pre-filing discussions. By that point in time, those parties were already well prepared to begin litigating this case while CAPAI could not seem to get a straight answer as to what the case was even about and how it was possible to have a Notice of Intent simultaneously filed with an Application that purportedly existed only to investigate rate case alternatives and not execute a settlement resulting in a general rate increase.

The Company has never proffered any explanation of why it discussed the substance of its rate case filing with certain regular intervenors but not others. It is very concerning that substantive discussions were held between select groups of customers and the Commission Staff prior to the filing of what was obviously an unprecedented and potentially controversial case and one that has resulted in a proposed rate increase but without proper notice to the public and in violation of existing policy and law. Whether non-Company parties foresaw this scenario, the fact is that PacifiCorp, with the implicit or explicit acquiescence of all those who joined the settlement, has effectively re-written the Commission's Procedural Rules and created an entirely new procedure for processing general rate increases, but without ever defining and first

proposing that new procedure to the Commission for its consideration as, possibly, the Commission anticipated. The new procedure adopted during this case simply seems to be that a utility can file a case that seeks at two mutually exclusive objectives, but the parties can then engage in confidential settlement negotiations resulting in a previously unknown third objective being selected and presented to the Commission for approval. Such a procedure is dangerously abbreviated and negotiated in confidential settlement discussions thereby entirely shutting out the general public on a matter of tremendous importance.

Regardless of whether Procedural Rule 272 prohibits the Commission Staff from engaging in non-noticed and exclusionary pre-filing discussions that ultimately led to a settlement stipulation, the very nature of such private discussions are dangerous and create very real opportunities for abuse of process in the future. Most importantly, it certainly does not instill much faith in a general public who, especially of late, seems increasingly skeptical of its ability to influence Commission decisions. Finally, this matter was simply too important and controversial to allow for private meetings that were not noticed to the public and from which even regular intervenors such as CAPAI were shut out. CAPAI respectfully hopes that the Commission strongly discourage any future filings and conversations of this nature.

III. MOTION TO COMPEL

A. Standards for Motions to Compel

Regarding discovery, the Commission's Procedural Rules operate in conjunction with the Idaho Rules of Civil Procedure. To the extent the latter conflict with the former, the Commission's rules control. Commission Procedural Rule 221 enumerates the general scope of discovery that may be conducted. Rule 222 grants the right to discovery to "all parties to a proceeding." Pursuant to Rule 225, production requests or written interrogatories and requests

for admission "may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, Idaho Rule of Civil Procedure, rule of the Commission, order or notice...." With respect to requests for production/interrogatories, the only exceptions to the foregoing allowable scope of discovery includes discovery used to obtain statements of opinion or policy not previously written or published. *Rule 225(1)(a)-(b).*

CAPAI notes that, historically, parties have adopted the practice of lumping interrogatories and requests for production under the same heading of "production requests." Regarding the general scope of discovery permitted by the Idaho Rules of Civil Procedure, Rule 26(b)(1) thereof provides, in part:

> Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Pursuant to Commission Procedural Rule 221(03), unless otherwise provided by order, notice or the Procedural Rules, a party to whom discovery has been propounded has fourteen (14) days to object or explain why a question cannot be answered according to this rule and twenty-one (21) days to answer. As noted below, the CAPAI discovery subject to this Motion, and to which PacifiCorp has not yet responded, was propounded on April 29, 2013.

In the event that a party refuses to respond to discovery, I.R.C.P. 37(a) provides that the propounding party may file a motion to compel a response to the discovery in question. Rule 37(a)(4) also provides for an award of expenses of the motion to compel in the event it is

granted. Commission Procedural Rule 232 provides that "[t]he Commission may impose all sanctions recognized by the Public Utilities Law for failure to comply with an order compelling discovery.

B. Information Sought by CAPAI and PacifiCorp's Refusal to Respond.

1. Explanation of Data Sought by CAPAI

Since AVISTA's 2012 general rate case, AVU-E-12-08, CAPAI has been making a concerted effort to obtain and analyze low-income consumption data in an attempt to, among other things, obtain a better understanding based on empirical evidence, of how differing rate residential rate design alternatives affect the poor. There is nothing inherently controversial about this objective. To the contrary, it might resolve what have historically been differences of opinion between CAPAI, the utility in question, and other parties. More importantly, it provides the Commission with better information in making its rulings on rate design issues.

The point of seeking low-income consumption data, therefore, is not solely for the purpose of bolstering CAPAI's position on any given issue in a given case, but to edify CAPAI, the Commission, Staff and all others interested in such matters as to how rate design decisions can have a significant impact on the poor.

CAPAI's quest for the data described is, frankly, the result of unsuccessful efforts over the years to obtain low-income data from public utilities. Historically, and for various reasons including privacy concerns, utilities have not identified, gathered, or provided to CAPAI or others certain information related to their low-income customers. CAPAI's pursuit of low-income consumption data, therefore, stems from this lack of effort to obtain such information without violating the privacy of the customers involved.

The manner in which low-income consumption data is sought in this case and has been obtained in other proceedings is generally as follows. First, CAPAI defines low-income

customers in its discovery requests through the use of a "low-income proxy group." This proxy group consists of all recipients of either LIHEAP or utility-funded low-income weatherization, but counts customers who receive multiple benefits only once to avoid double-counting. The utility involved can identify these customers with relative ease and speed and, using their physical addresses, collect their actual consumption data such as how many kilowatt hours are consumed for any given month or season. At no point during this process is the identity of any person for whom consumption data is collected and disseminated by the utility ever revealed.

CAPAI is well aware that the low-income proxy group does not constitute the entirety of any utility's low-income customers as that term is defined for purposes such as qualifying for LIHEAP benefits. It is a virtual certainty that there are far more low-income customers who qualify as such than those who actually seek and obtain benefits. Just the same, the low-income proxy group does reflect low-income consumption characteristics to some extent and is the best data source that CAPAI has thus far conceived that does not violate customers' privacy rights. CAPAI will gladly consider suggestions for ways to improve upon the proxy group, or possibly a different means of obtaining low-income consumption data altogether that any entity wishes to propose, especially the Commission or its Staff.

Once the low-income proxy group data is obtained, the next step is to utilize this consumption data by assessing the impact that varying rate design alternatives would have on low-income customers' bills. This requires what can be characterized by different names such as "model runs" or "bill impact analyses." These functions are not difficult nor unduly time-consuming and have been performed by other utilities such as AVISTA and even PacifiCorp itself in its pending Washington state general rate case.[2] Examples of such model runs would be to make different changes to the various components of whatever existing residential rate design

[2] WUTC Docket No. UE-130043.

the Company has in place and then ascertain how those changes would impact a low-income customer's monthly bills. Incidentally, CAPAI is learning that as these types of model runs are being analyzed, they appear to be revealing information useful not just to low-income customer advocates, but to all residential class customers.

For example, in discovery requests, a utility could be asked to perform a model run where a two-tiered system is replaced with three tiers, the consumption break point by which the tiers are delineated could be changed (e.g., a first tier block could be altered from usage up to 800 kWh/month to 1000 kWh/month), the energy rate pricing within different tiers could be changed (e.g., change from 8 cents/kWh to 9 cents in a given tier), the tiers could be flipped to declining rather than inclining block rates, or the basic charge could be adjusted.

Concerning the Company's basic monthly charge, the discovery requests also will provide empirical information regarding the effects of changes to this rate component on the poor. This is but one example of the type of data sought by CAPAI from PacifiCorp and the benefits that such knowledge brings.

CAPAI has previously sought and obtained from AVISTA the very same information in seeks in this case and which is now subject to this Motion in AVISTA's 2012 general rate case. AVISTA was able to turn around CAPAI's discovery requests within a few days. The information obtained convinced CAPAI to join the settlement stipulation proposed in that case.

More relevant to this Motion to Compel, the very information sought by CAPAI in this case has been sought and obtained from PacifiCorp's Washington utility, Pacific Power & Light in the Company's general rate case pending in that state by the Energy Project which, somewhat like CAPAI, is an umbrella organization that serves Washington's community action agencies. *Docket No. UE*-130043. CAPAI notes that the information provided by PacifiCorp in the

Washington proceeding was sponsored by the same PacifiCorp employee listed as the sponsor to the responses to CAPAI's discovery in this case, Ms. Joelle Steward. Thus, Ms. Steward has already performed the very same model run in Washington that CAPAI seeks in Idaho. Incidentally, the actual data and model run results provided by PacifiCorp in the Washington rate case is of no use to CAPAI because customer consumption varies significantly from region to region and utility to utility (i.e., Pacific Power & Light and Rocky Mountain Power). The Company did not object or refuse to respond to the identical discovery requests in Washington and was able to quickly provide a thorough response.

2. Specifics of CAPAI discovery and PacifiCorp Responses/Refusal to Respond.

The following section outlines the general procedural steps in the discovery process that occurred leading to the current Motion to Compel. As discussed below, CAPAI submitted discovery request Nos. 1-6 to PacifiCorp, with subparts. PacifiCorp has responded to all requests but No. 6(b) which CAPAI considers extremely important. Thus, this Motion to Compel is limited to Request 6(b). Request 6(b) keys off of request 6(a) so the entirety of Request No. 6 is as follows:

> 6. Using the Company's low-income proxy group, and based on actual monthly test year data as referred to in Request No.4, please make the following rate design model runs:
>
> a. Calculate the effects on the low-income customer proxy group's monthly bills if the Company's monthly basic charge were increased from its current level to $10, $15 and to $20, (assuming no changes to the existing commodity rates for the Residential class's two-tiered rate). In responding to this request, please make the requested calculations at existing rates during the test year.
>
> b. Assuming no change to the Company's existing monthly basic charge, calculate the effects on the low-income proxy groups' monthly bills in comparison to non-low income residential customers (using test

> year actual monthly consumption) if the existing two-tiered rate design is changed such that the consumption amount of the first tier is increased from the existing 700 kWh summer block to 800 kWh/month, 1000 kWh and 1200 kWh. Please provide the same data for the winter block of 1000 kWh if the block were changed to 800 kWh, 1200 kWh and 1400 kWh.

Without divulging anything confidential and of substance discussed during the two settlement hearings, it is fair to say that, as early as April 19, 2013, CAPAI made clear its ongoing effort to obtain the type of low-income consumption data described above and obtained from other utilities in other proceedings and that it needed to obtain the same type of data in this case in order to decide whether joining in the settlement was in the best interests of its constituents. It was agreed in this case that, as part of an effort to expedite PacifiCorp's ambitious time frame for obtaining a settlement prior to May 31, 2013, CAPAI could submit its discovery requests in an informal manner to PacifiCorp senior executive Mr. Ted Weston who would attempt to provide a prompt response.

On April 29, 2013, ten days after the conclusion of the first settlement conference, CAPAI submitted its discovery requests Nos. 1-6, with subparts, to PacifiCorp via an email and attachment to that email from CAPAI's legal counsel to Mr. Ted Weston as previously discussed. A true and correct copy of CAPAI's email is included as Exhibit "A" to the Affidavit of Brad M. Purdy (hereinafter referred to as "the Affidavit"), filed contemporaneously herewith. The actual discovery requests attached to the April 29 email as a Word document are included as Exhibit "B" to the Affidavit.

On May 2, 2013, the date of CAPAI's second settlement conference, PacifiCorp responded to CAPAI's discovery requests 1-5 with two separate emails, from Mr. Weston. A true and correct copy of this email is attached to the Affidavit as Exhibit "C." In Exhibit C, Mr. Weston informed the undersigned that the Company was still working on its response to

discovery request No. 6. In the interest of expediency, and because they are not subject to this Motion, the actual discovery responses to CAPAI's request Nos. 1-5 are not attached to the Affidavit.

As the month of May progressed, PacifiCorp drafted and circulated a proposed settlement stipulation seeking comments from the parties. On May 16, 2013, CAPAI, through legal counsel, provided its comments to the proposed settlement stipulation and reminded the Company that it had not yet responded to discovery request No. 6 and that said response was necessary for CAPAI to determine whether the proposed stipulation was acceptable. CAPAI articulated, in no uncertain terms, its ongoing concerns regarding the procedural abnormalities of this case and proposed that a condition precedent to the settlement should be included providing for a formal hearing to allow for public participation in the process. CAPAI never received a response from any party specific to its May 16 email.

On May 29, 2013, PacifiCorp, through its employee Ms. Kaley McNay, emailed its response to CAPAI's discovery request No. 6. A true and correct copy of the email and attached Word document containing the discovery response are attached to the Affidavit as Exhibits "D" and "E," respectively. Though the Company responded to request 6(a). PacifiCorp's response to request 6(b) is as follows:

> The Company has not performed the two-tiered rate designanalysis [*sic*] requested by CAPAI. As specified in paragraph 18 of the Stipulation if CAPAI is party to the Stipulation the Company agrees to participate in a collaborative rate design process to evaluate alternatives.

In the week or so that followed, PacifiCorp continued to refuse to respond to request 6(b) unless and until CAPAI executed a settlement stipulation and only then would a response to the request be provide through an undefined "collaborative effort" or "technical workshop" as Mr. Weston has referred to it. The precise date, location and other logistics of this workshop were

never specified and it is not clear whether CAPAI ever would have received the information it was seeking even had it joined the settlement and the workshop been conducted. Regardless, and as it made clear to the Company and all other parties, CAPAI needed the information sought by request 6(b) before it could determine whether the settlement agreement was in the best interests of its constituents. The promise of yet another "workshop" at some future point in time was not a sufficient response to a legitimate discovery request, especially when it required CAPAI to agree to a rate increase before it had the necessary information, is simply a baseless refusal to respond to legitimate discovery without specifying any particular legal basis for such refusal.

Had CAPAI accepted PacifiCorp's terms, CAPAI would have been barred from challenging the proposed rate increase if the information disclosed by the workshop revealed that the rate increase was not fair, just and reasonable. Thus, CAPAI was effectively forced to relinquish its rights as a party to be entitled to engage in discovery regardless of the fact that the Company did not place similar conditions on the discovery requests of any other party to the best of CAPAI's knowledge. To this day, PacifiCorp has yet to provide a specific legal grounds for its refusal to respond to request 6(b).

C. CAPAI Singled Out by PacifiCorp for Unequal Treatment Depriving CAPAI of its Full Party Rights.

There has been a significant amount of discovery submitted to PacifiCorp by the other parties thoroughly and promptly responded to by the Company. To the best of CAPAI's knowledge, CAPAI is the only party to whom the Company has refused to fully respond to its discovery. CAPAI is also the only party to decline to join in the settlement until such time as the Company provided CAPAI with the information CAPAI needed to decide whether to join in settlement. Up until the very end of May when the Settlement Stipulation was being executed by the other parties, CAPAI was given the distinct

impression on numerous occasions that discovery request 6(b) would be responded to. It wasn't until the end of May when the Company likely had the signatures of all other parties, or the assurance of those signatures, that PacifiCorp reversed its position and refused for the first time to respond to request 6(b). Nonetheless, the Company continued to pressure CAPAI to execute the settlement stipulation despite PacifiCorp's refusal to respond to discovery requests that CAPAI had indicated back in April, 2013 were essential to CAPAI in determining whether to join the settlement.

CAPAI was told that the Company would only respond to request 6(b) if CAPAI joined in the Settlement. This tactic is heavy-handed, and in violation of the Commission's Procedural Rules. Adding this to the unlawful manner in which this case has been handled from the time before it was even filed, the Company has clearly not behaved in a fair and reasonable manner toward CAPAI. To deny CAPAI substantive information that it needs in order to decide whether to even join the settlement is simply taking already bad behavior another step in the wrong direction.

D. PacifiCorp Has Failed to Assert Any Legal Basis for Refusal to Respond

To this day, PacifiCorp has technically not even proffered a legal basis for its objection to CAPAI's request No. 6(b) other than to state that it is not required to perform the model runs requested by CAPAI. The Company does not cite any administrative rules, statutes, case law, or even offer a practical reason why it is not required to respond to CAPAI's discovery. CAPAI is not obligated to speculate what the Company's legal basis is and until such time as it does, CAPAI's Motion should be granted simply because the Company has refused for no stated reason and in bad faith to fairly engage CAPAI and honor its rights as a formal party to this case.

CAPAI notes that requesting utilities to perform model runs or similar analyses is something that parties to proceedings before this Commission have done through discovery requests for at least decades. One example is the common practice of asking a utility to perform cost of service model runs or make other calculations regarding revenue requirement, rate spread, rate design, or any number of other areas involving models. CAPAI's "model" in this case is simply a request to perform basic algebraic calculations of rate impacts resulting from rate design alternatives based on information that only the

Company possesses. Because PacifiCorp is the only entity capable of obtaining the information sought by CAPAI and because said information is sensitive and the privacy of individuals involved must be maintained, and because it is in the best if not only position to perform the model runs requested by CAPAI, any claim that the Company is not required to provide such information is simply inconsistent with historical procedure and the Commission's Procedural Rules and is inconsistent with the fact that AVISTA promptly provided this information to CAPAI and PacifiCorp did so itself in its Washington rate case, though for a different operating division.

IV. SUMMARY OF CAPAI'S CONCERNS AND MOTION TO COMPEL

To summarize, PacifiCorp met in private with Staff and the Company's largest customers prior to filing a manner of proceeding that is unprecedented and defies labeling. It is a rate case, yet it's not. A Notice of Intent to File a General Rate Case was filed, yet it wasn't. It was treated as a general rate case in certain respects, but not in others, yet resulted in a general rate increase that was expeditiously brokered. Technically, an application for a general rate case has not yet even been filed in this proceeding. Assuming the Commission considers the initial pleadings and Notices to have initiated a general rate case, then such pleadings and Notices were a violation of the 2011settlement stipulation because it was filed prior to May 31, 2013. Nonetheless, the parties agreed to a general rate increase prior to May 31, 2013 through confidential settlement negotiations which, apparently, is their proposed "alternative" to a general rate case. The refusal of PacifiCorp to respond to legitimate and relevant discovery requests essential to CAPAI's ability to determine whether to join in this highly questionable settlement is the proverbial insult to injury.

Regarding PacifiCorp's refusal to respond to CAPAI discovery, CAPAI made it clear to the parties early in this proceeding that the information sought by that discovery was essential to CAPAI to determine whether PacifiCorp's existing residential rate design was fair, just and reasonable and, therefore, whether to join in the proposed settlement. Procedural Rule 124 automatically puts at issue matters such as revenue requirement, rate spread, and rate design. CAPAI further notes that during the months that have passed since the discovery was first propounded, especially the past two months when

the matter has sat idle waiting for hearing, the Company had more than ample opportunity to provide the same information that took its Washington division several days to provide. The Company has yet to even offer a legal basis for its refusal to respond to this discovery. CAPAI respectfully submits that this motion could and should be granted on that basis alone.

CAPAI fully acknowledges that this Motion extends well beyond the narrow issue of a typical Motion to Compel, but believes that the refusal of PacifiCorp to respond to CAPAI's discovery is a clear manifestation and symptom of a much larger systemic problem that deserves to be fully addressed in all of its aspects, legal, factual and otherwise. Failure to do so very well might result in very bad precedent being established and a domino effect that will carry the consequences of this case far outside its parameters. Regardless of whether Staff adamantly believes that it has negotiated an end result in terms of a rate increase that is in the best interests of all ratepayers, no such end result is worth establishing the precedent that will be set if the settlement stipulation is approved in this case.

CAPAI has been increasingly concerned about the increased frequency with which general rate cases are being filed and the increasingly abbreviated manner in which they are being processed. CAPAI understands that the Commission's legal authority and powers are limited in terms of discouraging utilities from filing general rate cases. CAPAI is also aware of the substantial demand on Commission resources that nearly annual general rate case filings by Idaho's three largest public electric utilities has had, but this case has followed a path that substantially distances not only the general public from the ability to provide meaningful input to the Commission but parties such as CAPAI as well. If the Commission believes it worthwhile to formally implement a major change to the manner in which general rate cases are handled, then it certainly possesses the legal authority to initiate and engage in an administrative rulemaking procedure for that purpose. To authorize such major change to general rate case procedure through inference and by the approval of an unlawful, *ad hoc*, confidential, and hastily-conceived process and product such as the proposed settlement stipulation in this case is not something the Commission must accept. Public perception does matter and the process employed in arriving at the

pending rate case settlement, regardless of how favorable it might be to ratepayers, is certainly not going to bolster public confidence in the ratemaking process.

V. CONCLUSION

CAPAI respectfully requests that PacifiCorp be required to respond fully and in good faith to CAPAI's discovery request No. 6(b).

DATED, this 30th day of July, 2013

Brad M. Purdy
Attorney for Community Partnership Association of Idaho

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 30th day of July, 2013, I served a copy of the foregoing document on the following by electronic mail and U.S. Postage, first class.

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